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MYERS BIGEL SIBLEY & SAJOVEC, P.A.
P.O. BOX 37428
RALEIGH, NC 27627

EXAMINER	
PIGGUSH, AARON C	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte IGOR MISKOVIC and SARANDIS KALOGEROPOULOS

Appeal 2008-2748
Application 10/519,809[1]
Technology Center 2800

Decided: September 25, 2008

Before MAHSHID D. SAADAT, JOHN A. JEFFERY,
and MARC S. HOFF, *Administrative Patent Judges.*

HOFF, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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[1] Application filed December 30, 2004. The real party in interest is Sony Ericsson Mobile Communications LP.

Appellants' invention relates to a system and method for power consumption management, particularly in the context of a mobile telephone. Appellants calculate a level indicating parameter value representing the established power consumption as a predetermined level value in a predetermined scale, and display that consumption level to the user (Spec. 3).

Claim 1 is exemplary:

1. A battery-driven electronic device, comprising

means for detecting power consumption that is configured to establish present power consumption during operation of the device;

means for presenting data based on the established current power consumption;

means for calculating a level indicating parameter value representing the established current power consumption as a consumption level in a predetermined scale; and

wherein said presented data comprises an indication of said consumption level in said scale.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Mundt	5,903,254	May 11, 1999

Claims 1-5 and 7-11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mundt.

Claims 6 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mundt.

Appellants contend that Mundt does not teach determining present or current power consumption and presenting it as a consumption level in a predetermined scale (Br. 5).

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed October 23, 2006) and the Answer (mailed March 22, 2007) for their respective details.

ISSUE

The principal issue in the appeal before us is whether the Examiner erred in finding that Mundt teaches calculating a level indicating parameter value representing the established power consumption as a consumption level, and presenting an indication of said consumption level, in a predetermined scale, to a user, as required by claim 1.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, the invention relates to a system and method for power consumption management, particularly in the context of a mobile telephone. Appellants calculate a level indicating parameter value representing the established power consumption as a predetermined level value in a predetermined scale, and display that consumption level to the user (Spec. 3; Figs. 3, 5).

Mundt

2. Mundt teaches a user interface for setting computer speaker volume and readily informing the user which of a series of power conservation levels is being utilized by a notebook computer (col. 2, ll. 45-48).

3. In Mundt, a notebook computer user selects one of four power conservation levels (col. 2, ll. 55-57).

4. The appropriate faucet icon, as illustrated in Figs. 5A-5D, is displayed as visual confirmation of that user selection.

5. Mundt teaches determining estimated battery time remaining based on the current rate of [power] consumption (col. 6, ll. 48-55).

PRINCIPLES OF LAW

Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

In an appeal from a rejection for anticipation, the Appellants must explain which limitations are not found in the reference. *See Gechter v. Davidson*, 116 F.3d 1454, 1460 (Fed. Cir. 1997) ("[W]e expect that the Board's anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each *contested* limitation and satisfactory explanations for such findings.")(emphasis added). *See also In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that "the principles laid down in *Graham* reaffirmed the 'functional approach' of *Hotchkiss*, 11 How. 248." *KSR,* 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The Court explained:

> When a work is available in one form of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.*

ANALYSIS

Claims 1-5 and 7-11

Appellants present a single argument commonly directed to independent claims 1 and 7. Independent claims 1 and 7 both recite "calculat[ing] a level indicating parameter value representing the detected

present power consumption as a consumption level in a predetermined scale."

Appellants argue that Mundt does not disclose determining the present or current power consumption in a battery-driven electronic device and presenting the power consumption as a consumption level in a predetermined scale (Br. 5). Appellants traverse the Examiner's citation of Figs. 5A-5D of Mundt as evidence of such teaching, alleging that the various water faucet icons shown in these Figures do not determine the present or current power consumption, nor present that consumption as a consumption level, but merely indicate what power conservation technique is being applied at any given time, e.g., "what peripherals or other circuitry have been shut down" (Br. 5).

We agree with Appellants. The Examiner states that "[i]t is reasonable to interpret the faucet in Figs. 5A-5D as showing the present power consumption because it is still displaying detection/determination of the current power consumption, even if that consumption level is initially activated by the user" (Ans. 7). In Mundt, a laptop computer user selects one of four power conservation levels (FF 3). The appropriate faucet icon, as illustrated in Figs. 5A-5D, is displayed as visual confirmation of that user selection (FF 4). While we agree generally with the Examiner that the particular icon displayed *is* indicative of present power consumption, we reiterate that Mundt teaches a system whereby a user selects a power conservation technique and the appropriate faucet icon visually reflects that selection. Mundt does not teach *calculating* a value representing the

established current power consumption *as a consumption level*, and presenting an indication of that consumption level, as claim 1 requires.

With respect to the Examiner's further argument that the battery level display of Figure 4 of Mundt meets the claim (Ans. 9), we agree that Mundt teaches determining estimated battery time remaining based on the current rate of [power] consumption (FF 5), then displaying that estimation (Fig. 4). However, this section of Mundt also contains no teaching of calculating a level indicating parameter value representing the established current power consumption *as a consumption level*, then presenting that indication, as claim 1 requires.

Because we find that Mundt does not teach every element of the claimed invention, we therefore find error in the Examiner's rejection of claims 1-5 and 7-11 under 35 U.S.C. § 102(b).

Claims 6 and 12

Claims 6 and 12 depend from independent claims 1 and 7, respectively. Because we do not sustain the rejections of claims 1 and 7, *supra*, we therefore do not sustain the rejections of claims 6 and 12 dependent therefrom, for the same reasons.

CONCLUSION OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-12. On the record before us, claims 1-12 have not been shown to be unpatentable.

DECISION

The Examiner's decision rejecting claims 1-12 is reversed.

REVERSED

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MYERS BIGEL SIBLEY & SAJOVEC, P.A.
P.O. BOX 37428
RALEIGH, NC 27627